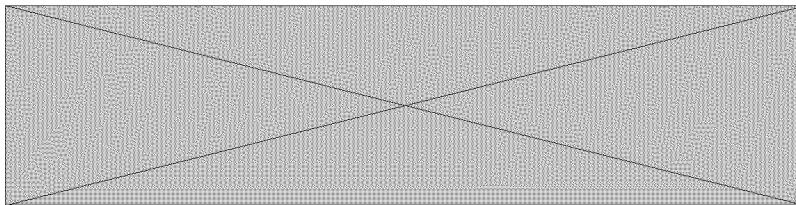


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**Sent:** Mon 4/24/2017 3:55:05 PM  
**Subject:** FW: FYI - Industry Urges Trump EPA To Scrap Process For ESA Pesticide Reviews  
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**From:** Shar, Alan  
**Sent:** Monday, April 24, 2017 10:33 AM  
**To:** Weiler, Gregory <weiler.gregory@epa.gov>; Reyes, Elizabeth <Reyes.Elizabeth@epa.gov>  
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### Industry Urges Trump EPA To Scrap Process For ESA Pesticide Reviews

April 20, 2017

Pesticide producers, including chemical giant Dow AgroSciences, are targeting the Obama EPA's process for assessing risks of pesticides to endangered species, arguing to the Trump administration that the process unveiled in 2013 is "fundamentally flawed and should be set aside," and asking to halt the first three reviews conducted under the process.

In [April 13 letters](#) to EPA Administrator Scott Pruitt, Commerce Secretary Wilbur Ross and Interior Secretary Ryan Zinke, first reported by the *Associated Press*, an attorney representing producers of the first three organophosphate (OP) pesticides to undergo review under the new process said that the Obama administration's so-called interim approaches are flawed and EPA should seek an alternative approach.

But adopting a new approach and applying it to ongoing reviews may be difficult as EPA and wildlife management agencies are subject to court-endorsed settlements with environmentalists to complete the reviews of the three

chemicals at the heart of the industry concerns.

And environmental groups are already faulting the industry push to scrap the new consultation process, saying it seeks to reverse already completed EPA evaluations and is bolstered by Pruitt's recent decision to reverse a proposed ban on chlorpyrifos, a widely-used pesticide.

"It's abhorrent that Dow is pressuring the Trump EPA to ignore years of scientific research on pesticide dangers and willfully violate the Endangered Species Act," the Center for Biological Diversity said in a statement.

The industry letters are directed at the inter-agency process that EPA and federal wildlife officials released in November 2013 based on National Academy of Sciences advice for addressing EPA's long-standing failure to comply with the Endangered Species Act (ESA) in its Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) pesticide registrations.

ESA Section 7 requires that EPA consult with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), collectively known as the services, on pesticides' potential risks to listed species.

Following an EPA biological evaluation (BE), the services craft a biological opinion of the potential for jeopardizing listed species and lay out reasonable and prudent alternatives that EPA must implement to protect the species.

Pesticide producers, who have long faulted the Obama administration's process as overestimating their products' risks to listed species, are now urging Pruitt and the heads of the Departments of Commerce and Interior, which house NMFS and FWS, to meet with industry to develop a different approach for meeting EPA's legal obligation to review pesticides' risks under the ESA.

"Our clients are unclear about the Administration's intentions related to the ongoing controversy regarding the intersection between pesticide registration activities under [FIFRA] and activities of EPA and the Services under the [ESA]," David Weinberg of the law firm Wiley Rein LLP says in the letter to Pruitt.

"We would welcome the opportunity to discuss that issue with you, However, our clients' immediate concern is with the fundamental scientific unsoundness of the OP BEs."

### **First Reviews**

The three companies, Dow, Makhteshim Agan of North America, Inc. and FMC Corporation are registrants of pesticide products containing one or more of the

active OP ingredients chlorpyrifos, diazinon and malathion, the first batch of substances to be subject to the inter-agency review using the Obama administration's process.

In the letters to Ross and Zinke, the attorney urges NMFS and FWS to return the three BEs for those substances to EPA, meet with EPA and the U.S. Department of Agriculture to develop a new process, and amend settlement agreements with environmental groups that set deadlines for completing the first batches of ecological reviews to allow more time.

The current push for Trump officials to scrap the Obama administration's still-evolving process for assessing pesticides' risks to listed species reiterates critical comments the pesticide industry and others submitted to EPA last June on drafts of the first three evaluations.

EPA in April 2016 issued the first three draft evaluations conducted under the interim approaches, two of which, chlorpyrifos and malathion, found the substances are likely to adversely affect 97 percent of species evaluated and 99 percent of critical habitat.

In comments, industry groups ranging from the pesticide producers coalition CropLife America, the Agricultural Retailers Association (ARA), and the Center for Regulatory Effectiveness, argued that EPA's new process contains conservative estimates and unrealistic exposure scenarios that overestimate risks.

For example, CropLife argued that the first three draft biological evaluations, of three widely-used OP pesticides, "reflect seriously erroneous conclusions." ARA said EPA made "incredible and unsubstantiated leaps of faith," including that use of chlorpyrifos is likely to impact sea turtles and killer whales in the ocean.

Environmentalists, including CBD and the Northwest Center for Alternatives to Pesticides, generally backed the new review process, while calling for better evaluation of risks to all species -- rather than only the most sensitive species -- and urged EPA to avoid significant revisions to the new process until staff completes more scheduled reviews.

While promising future improvements to the process, the Obama EPA, two days before Trump's inauguration, forwarded final versions of the first three BEs to FWS and NMFS for continued consultation, the industry letters say.

EPA and the services are conducting the reviews under pressure from court deadlines reached in federal agencies' settlements with environmentalists that

sought to compel agencies to comply with the ESA mandate to assess risks of pesticides to species.

Federal officials had long failed to meet the obligation due to differences between FIFRA and ESA, and other complications.

The settlement agreements require that EPA and federal wildlife officials complete consultation on risks of chlorpyrifos, diazinon and malathion by December 2017, and on carbaryl and methomyl by December 2018. Additional settlements also set deadlines for review of four other ingredients, including glyphosate, the world's most commonly used herbicide.

### **Settlement Deadlines**

In their recent letters, the pesticide producers charge that the Obama EPA failed to properly implement the interim approaches in evaluating the three OP pesticides, and that the process is fundamentally flawed.

The companies argue EPA's BEs lack transparency and inappropriately include proposed and candidate species not eligible for ESA protection, among other concerns. They say EPA relied on studies without evaluating their data quality and relevance, while dismissing scientifically valid studies submitted by registrants.

Additionally the letter says EPA pointed to legal deadlines as a reason for not adequately addressing industry comments, rather than urging federal wildlife officials to seek revisions of the settlement agreements' deadlines. The companies urge EPA to withdraw its BEs from the services and request that federal wildlife officials seek to postpone deadlines for reviewing the three pesticides.

"EPA cannot dodge its ESA statutory obligation to rely on the 'best scientific and commercial data available,'" the companies' attorney says in the letter to Pruitt.

"At this point, EPA should withdraw the BEs from the Services and leave it to NMFS to address the existing settlement agreement deadline." -- *Dave Reynolds* ([dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com))

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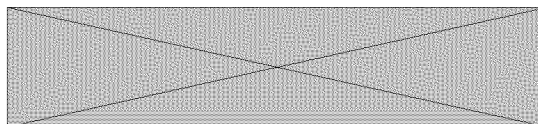
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